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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DOUGLAS JAKUBOWSKI

Appeal 2008-006298
Application 09/736,167
Technology Center 2100

Decided: September 22, 2009

Before JAMES D. THOMAS, JOHN A. JEFFERY, and THU A. DANG,
Administrative Patent Judges.

THOMAS, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1 through 98. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Invention

A site mining stylesheet may be used to control the presentation of content extracted from a source web page. In particular, a stylesheet stored on a proxy server or the like may be called when a web page associated with the stylesheet is requested by a mobile device. After receiving such a request, the stylesheet extracts the content from the source web page and subsequently transforms and manipulates the extracted content. From there, a destination web page is generated and transmitted to the requesting mobile device for display. (Spec. 50, Abstract, ll. 1-8).

Representative Claim

7. A method for generating a stylesheet, comprising:
receiving an indication of an item of content to be extracted
from a source page containing one or more items of content;
determining an address for uniquely locating said item of
content to be extracted;
receiving transformation information for manipulating said item
of content;
storing said transformation information and said address to a
site mining template; and
compiling said transformation information and said address
stored in said template to a stylesheet utilizable for mining content
from said source page to produce a destination page containing said
extracted content.

Prior Art and Examiner's Rejections

The Examiner relies on the following references as evidence of unpatentability:

Li	6,799,299 B1	Sep. 28, 2004 (filed Sep. 23, 1999)
Bickmore	6,857,102 B1	Feb. 15, 2005 (filed Jan. 29, 1999)

All 98 claims on appeal stand rejected under 35 U.S.C. § 103. As evidence of obviousness as to claims 7 through 23, 30 through 43, 47 through 53, 60 through 75, and 82 through 98, the Examiner relies upon Li alone. To Li the Examiner adds Bickmore as to claims 1 through 6, 24 through 29, 44 through 46, 54 through 59, and 76 through 81.

Claim Groupings

Based upon Appellant's arguments in the principal Brief as to the first stated rejection over Li alone, Appellant presents no arguments as to any specific claim among those within this rejection. As such, we consider independent claim 7 as representative of them all. A similar situation exists with respect to Appellant's arguments as to the second stated rejection. We take independent claim 1 as representative of all of those claims.

ISSUES

1. Has Appellant shown that the Examiner erred in finding that Li teaches the subject matter of determining an address for uniquely locating an item of content?

2. Has Appellant shown that Examiner erred in finding that the combination of Li and Bickmore teaches generating a site template based on capabilities of a mobile device?

FINDINGS OF FACT

1. With respect to Appellant's assessment of the current state of the art, Appellant indicates at page 1 of the Specification:

Currently, the appearance of this content varies greatly depending on the platform in which the content is displayed. For example, because of display and bandwidth limitations, a user utilizing a PDA oftentimes cannot access a web page designed for display on a desktop computer, at least not in the manner contemplated by the page designer.

(Spec. 1, ll. 21-25).

Within this assessment of the prior art, Appellant appears to characterize, at the top of page 2 of the Specification, the display of only a specific subset of source page content as site mining.

2. Li's arrangement of creating stylesheets in a data processing environment includes an application and a data processing system 200 of Figure 1, but also includes the applicability of his teachings to Personal Digital Assistant (PDA) devices as revealed at column 4, lines 14 through 37. Exemplary data processing systems are also stated to include notebook computers and handheld computers in addition to those characterized as PDAs. Figure 6 of Li shows source document tags and target document tags where the thrust of his invention is to create a stylesheet to convert source

documents into target documents by means of identifying particular source elements and corresponding target elements in the documents.

The Examiner relies upon the showing in Figure 14A and the teaching at column 8, lines 54 through 67, that element 1404 in this figure shows that “[s]ix HTML links named Home, Products, Documentations, Records, Support, and Contact are centered in section 1404.” Compare also Figure 15A. Figure 13 of Li illustrates a window displayed after selection of a target document for an XML document. Figure 16 illustrates a window of an employee data table with formatting using an XML stylesheet in accordance with the disclosed invention in Li. Both of these figures show respective address locations of the respective documents displayed and referenced.

3. Bickmore identifies at columns 1 and 2 in his background of the invention discussion known problems of accessing World Wide Web pages including HTML documents that have been designed originally for desktop systems and corresponding problems to display them on personal electronic devices that have much more limited display capabilities than conventional desktop systems. These limitations lead Bickmore to characterize his invention as an automatic re-authoring system. Bickmore’s invention provides a number of different display element transformations that are applied to the original document or a selected re-authored page of a document, such as the generalized transformations in Figure 14.

PRINCIPLES OF LAW

Obviousness

“[T]he PTO gives claims their ‘broadest reasonable interpretation.’” *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). “Moreover, limitations are not to be read into the claims from the specification.” *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)). Our reviewing court has repeatedly warned against confining the claims to specific embodiments described in the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) (en banc).

One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

Section 103 forbids issuance of a patent when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.”

KSR Int’l Co. v. Teleflex Inc., 550 U.S. 398, 406 (2007).

In *KSR*, the Supreme Court emphasized “the need for caution in granting a patent based on the combination of elements found in the prior art,” *id.* at 415, and discussed circumstances in which a patent might be determined to be obvious. *Id.* at 415-16 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 12 (1966)). The Court reaffirmed principles based on its precedent that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable

results.” *Id.* at 416. The operative question in this “functional approach” is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.* at 417.

We must determine whether or not the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *See id.* at 406. An obviousness determination is not the result of a rigid formula, and we will consider the facts of a case and the common sense of those skilled in the art. *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007) (citation omitted). That is, the test for obviousness is rather what the combined teachings of the references would have suggested to those of ordinary skill in the art. *See In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991); *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

Teaching Away

As to the specific question of “teaching away,” our reviewing court in *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994) stated that “[a] reference may be said to teach away when a person of ordinary skill, upon [examining] the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.”

ANALYSIS

Essentially for the reasons set forth by the Examiner in the Answer, we affirm the rejection of representative independent claim 7 on appeal in the first stated rejection over Li alone, as well as the second stated rejection of representative independent claim 1 over the combination of Li and Bickmore. We add the following to embellish upon the Examiner's reasoning as well as bring to light the subtle teachings not emphasized by the Examiner in his correlation of the respective references' teachings to the claims on appeal.

We turn first to the rejection of representative independent claim 7. Although the Examiner and Appellant appear to agree that a particular address for uniquely locating an item of content is not expressly disclosed in Li, by the use of the term "address" in the text we have noted in Figures 13 and 16 in Finding of Fact 2, the reference does in fact show content locations by addresses. The Examiner's reliance upon Figure 6 initially as identifying source document tags and target document tags as effective addresses is not misplaced since it appears that these tags not only identify respective documents but inferentially or indirectly indicate to one of ordinary skill in the art the manner in which these documents may be located. The actual HTML links shown in Figure 14A (with a comparable showing in Figure 15A) are aptly characterized by one of ordinary skill in the art as HTML link addresses in the context of addressability of documents within traditional Internet protocols. From an artisan's perspective or a person of ordinary skill in the art, these teachings are, as argued by the Examiner, suggestive of addresses to the extent recited broadly in representative independent claim 7

on appeal. The artisan would clearly appreciate that in the context of any data processing system, existing documents must be formally locatable or addressable within the given data processing system or remotely such as using traditional Internet protocols to do so.

Based upon the earlier-noted case law, Li may not be fairly characterized, as argued at page 7 of the principal Brief on appeal and at page 3 of the Reply Brief, as teaching away or otherwise leading away from the claimed invention.

Turning next to the rejection of representative independent claim 1 on appeal utilizing the teachings of Li in view of Bickmore, it is significant that the Examiner has recognized and pointed out on the record that Li teaches the use of exemplary devices as including mobile devices as we have outlined in Finding of Fact 2. Appellant, as part of the prior art assessment we noted in Finding of Fact 1, notes that such mobile or PDA-type devices have limited display characteristics or capabilities. Significantly, and independently, corresponding display limitations were recognized by Bickmore as well as we indicated in Finding of Fact 3.

Essentially, in accordance with the earlier-noted governing case law within 35 U.S.C. § 103, it would have been obvious from a person of ordinary skill in the art's point of view to utilize the detailed teachings of art recognized limited display area devices such as PDAs and the details in Bickmore when the recognition only existed in a limited manner of these type of devices as exemplary display devices initially in Li. Bickmore teaches the transformation that is necessary from conventional display capabilities of desktop-type computer systems to mobile device-type limited

display devices. The details of stylesheets and the like remain significantly taught in Li.

In light of these findings, to the extent Appellant argues improper hindsight by the Examiner in the combination, the earlier-noted case law as well as the facts do not support such a conclusion. To the extent Appellant's representative independent claim 1 does recite an improvement over the Li environment, from a artisan's perspective, the combination of teachings of Bickmore and Li amount functionally to an improvement that is no more than the predictable use of prior art elements according to their established functions as represented by the teachings of these two references.

We do not agree with Appellant's characterization, at page 4 of the Reply Brief, that the Examiner has improperly used a line of reasoning related to inherency within a rejection under 35 U.S.C. § 103. The Examiner's reasoning merely explains, from the perspective of a person of ordinary skill in the art, what Li and Bickmore respectively teach in slightly different words than is claimed. Appellant's additional position at the bottom of page 4 of the Reply Brief appears contradictory when it states that "[e]ven if the Bickmore [sic] discloses the acknowledged deficiencies in Li, Bickmore would still not make up for the deficiencies in Li." Some of Appellant's arguments in the principal Brief on appeal and in the Reply Brief appear to take the view that because Bickmore teaches more than what is involved in the disclosed and claimed invention, it is therefore not pertinent to the subject matter of the present claims on appeal. Such an approach does not detract from the actual teaching value to one of ordinary

skill in the art among those teachings that are pertinent to the claimed subject matter and relied upon by the Examiner.

CONCLUSIONS OF LAW AND DECISION

Appellant has not shown that the Examiner erred in concluding that the subject matter of representative independent claim 7 on appeal would have been obvious over the teachings of Li alone, as to the issue of determining an address for a location of an item of content to be extracted. Correspondingly, Appellant has not shown that the Examiner erred in concluding that the respective combination of teachings of Li and Bickmore would have met the feature of representative independent claim 1 of generating a site template based on capabilities of a mobile device. Therefore, we affirm the rejection of all 98 claims on appeal. All claims on appeal are unpatentable.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

msc
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